

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDIN A. CHACON,

Plaintiff,

v.

J. CERRINI, et al.,

Defendants.

Case No.: C 13-1982 CW (PR)

ORDER OF SERVICE AND DIRECTING
PARTIES TO FILE CONSENT OR
DECLINATION TO MAGISTRATE JUDGE
JURISDICTION

INTRODUCTION

Plaintiff, a state prisoner incarcerated at the California Correctional Institution at Tehachapi (CCI), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983, alleging the violation of his constitutional rights by prison officials at San Quentin State Prison (SQSP). His motion for leave to proceed in forma pauperis has been granted.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must

1 allege two essential elements: (1) that a right secured by the
2 Constitution or laws of the United States was violated, and
3 (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48
5 (1988).

6 II. Plaintiff's Claims

7 In his complaint, Plaintiff alleges that on December 11,
8 2008, he was transferred from CCI to SQSP to attend the trial of
9 his civil rights action against medical personnel at Pelican Bay
10 State Prison.¹ He remained at SQSP until February 18, 2009, when
11 he was transferred back to CCI.

12 Plaintiff claims that during the approximately three months
13 he spent at SQSP, Correctional Officer J. Cerrini retaliated
14 against him for his lawsuit by refusing to allow him access to
15 legal materials he required for his trial, verbally harassing him
16 and calling him a "stool pigeon" in front of other inmates,
17 falsely accusing him of misconduct in order to keep him in
18 administrative segregation, and intentionally throwing a food tray
19 at him.

20 Further, Plaintiff maintains that after he returned to CCI in
21 February 2009, CCI institutional gang investigators T. Crouch and
22 J. Tyree, and CCI appeals coordinator K. Sampson, retaliated
23 against him for his lawsuit by revalidating him as a gang member
24 based on false evidence allegedly found by Cerrini in his cell at
25 SQSP. Additionally, Plaintiff complains that after he was
26 revalidated based on such evidence, he filed an administrative

27 _____
28 ¹ See Chacon v. Gallian, et al., Case No. C 05-4880 SI (PR).

1 appeal at SQSP asking for the evidence to be removed from his
2 file, but SQSP institutional gang investigator E. Patao and SQSP
3 correctional lieutenant T. Amrhein-Conama retaliated against him
4 by refusing to do so. Plaintiff seeks monetary damages and
5 equitable relief.

6 "Within the prison context, a viable claim of First Amendment
7 retaliation entails five basic elements: (1) An assertion that a
8 state actor took some adverse action against an inmate (2) because
9 of (3) that prisoner's protected conduct, and that such action
10 (4) chilled the inmate's exercise of his First Amendment rights,
11 and (5) the action did not reasonably advance a legitimate
12 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
13 Cir. 2005) (footnote omitted). To prove retaliation, a plaintiff
14 must show that the defendants took adverse action against him or
15 her that "would chill or silence a person of ordinary firmness
16 from future First Amendment activities." White v. Lee, 227 F.3d
17 1214, 1228 (9th Cir. 2000) (citing Mendocino Env'tl. Ctr. v.
18 Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999)). Prisoners
19 may not be retaliated against for exercising their right of access
20 to the courts. See Schroeder v. McDonald, 55 F.3d 454, 461 (9th
21 Cir. 1995).

22 When Plaintiff's allegations are construed liberally, they
23 state a cognizable claim for retaliation against the SQSP
24 Defendants.²

26 ² Plaintiff's claims against the CCI Defendants are
27 proceeding in a separate action pending in the Eastern District of
28 California. See Chacon v. Cerrini, et al., 1:11-cv-01689-GSA-PC.

1 III. Consent or Declination to Proceed Before Magistrate Judge

2 In order to encourage the just, speedy and inexpensive
3 determination of 42 U.S.C. § 1983 cases filed in this district,
4 the parties may waive their right to proceed before a district
5 judge and consent to proceed before a magistrate judge for all
6 purposes. Attached to this Order is a Notice of Option to Consent
7 to Proceed Before United States Magistrate Judge and an Order
8 requiring the parties to notify the Court whether they consent or
9 decline to so proceeding. The parties shall complete the
10 requisite consent or declination form and return it to the Court
as set forth in paragraph 3 of the Conclusion of this Order.

11 CONCLUSION

12 For the foregoing reasons, the Court orders as follows:

13 1. Plaintiff states cognizable claims for retaliation.

14 The Clerk of the Court shall mail a Notice of Lawsuit and
15 Request for Waiver of Service of Summons, two copies of the Waiver
16 of Service of Summons, a copy of the Complaint (Docket no. 1) and
17 all attachments thereto and a copy of this Order to SQSP
18 Defendants J. Cerrini, E. Patao, and T. Amrhein-Conama. The Clerk
19 shall also mail a copy of the complaint and a copy of this Order
20 to the State Attorney General's Office in San Francisco, and a
21 copy of this Order to Plaintiff.

22 2. Defendants are cautioned that Rule 4 of the Federal
23 Rules of Civil Procedure require them to cooperate in saving
24 unnecessary costs of service of the summons and complaint.
25 Pursuant to Rule 4, if Defendants, after being notified of this
26 action and asked by the Court, on behalf of Plaintiff, to waive
27 service of the summons, fail to do so, they will be required to
28

1 bear the cost of such service unless good cause be shown for their
2 failure to sign and return the waiver forms. If service is
3 waived, this action will proceed as if Defendants had been served
4 on the date that the waiver is filed, except that pursuant to Rule
5 12(a)(1)(B), Defendants will not be required to serve and file an
6 answer before sixty days from the date on which the request for
7 waiver was sent. (This allows a longer time to respond than would
8 be required if formal service of summons is necessary.)

9 Defendants are advised to read the statement set forth at the
10 foot of the waiver form that more completely describes the duties
11 of the parties with regard to waiver of service of the summons.
12 If service is waived after the date provided in the Notice but
13 before Defendants have been personally served, the answer shall be
14 due sixty days from the date on which the request for waiver was
15 sent or twenty days from the date the waiver form is filed,
16 whichever is later.

17 3. No later than thirty days from the date of this Order,
18 all parties shall file their consent or declination to proceed
19 before a United States Magistrate Judge.

20 4. Defendants shall answer the complaint in accordance with
21 the Federal Rules of Civil Procedure. The following briefing
22 schedule shall govern dispositive motions in this action:

23 a. No later than thirty days from the date their
24 answer is due, Defendants shall file a motion for summary judgment
25 or other dispositive motion. If Defendants file a motion for
26 summary judgment, it shall be supported by adequate factual
27 documentation and shall conform in all respects to Federal Rule of
28 Civil Procedure 56. If Defendants are of the opinion that this

1 case cannot be resolved by summary judgment, they shall so inform
2 the Court prior to the date the summary judgment motion is due.
3 All papers filed with the Court shall be promptly served on
4 Plaintiff.

5 At the time of filing the motion for summary judgment or
6 other dispositive motion, Defendants shall comply with the Ninth
7 Circuit's decisions in Woods v. Carey, 684 F.3d 934 (9th Cir.
8 2012), and Stratton v. Buck, 697 F.3d 1004 (9th Cir. 2012), and
9 provide Plaintiff with notice of what is required of him to oppose
10 a summary judgment motion or a motion to dismiss for failure to
11 exhaust administrative remedies.

12 b. Plaintiff's opposition to the motion for summary
13 judgment or other dispositive motion shall be filed with the Court
14 and served on Defendants no later than twenty-eight days after the
15 date on which Defendants' motion is filed.

16 Before filing his opposition, Plaintiff is advised to read
17 the notice that will be provided to him by Defendants when the
18 motion is filed, and Rule 56 of the Federal Rules of Civil
19 Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party
20 opposing summary judgment must come forward with evidence showing
21 triable issues of material fact on every essential element of his
22 claim). Plaintiff is cautioned that because he bears the burden
23 of proving his allegations in this case, he must be prepared to
24 produce evidence in support of those allegations when he files his
25 opposition to Defendants' summary judgment motion. Such evidence
26 may include sworn declarations from himself and other witnesses to
27 the incident, and copies of documents authenticated by sworn
28 declaration. Plaintiff will not be able to avoid summary judgment
simply by repeating the allegations of his complaint.

1 c. Defendants shall file a reply brief no later than
2 fourteen days after the date Plaintiff's opposition is filed.

3 d. The motion shall be deemed submitted as of the date
4 the reply brief is due. No hearing will be held on the motion
5 unless the Court so orders at a later date.

6 5. Discovery may be taken in this action in accordance with
7 the Federal Rules of Civil Procedure. Leave of the Court pursuant
8 to Rule 30(a)(2) is hereby granted to Defendants to depose
9 Plaintiff and any other necessary witnesses confined in prison.

10 6. All communications by Plaintiff with the Court must be
11 served on Defendants, or Defendants' counsel once counsel has been
12 designated, by mailing a true copy of the document to Defendants
13 or Defendants' counsel.

14 7. It is Plaintiff's responsibility to prosecute this case.
15 He must keep the Court informed of any change of address and must
16 comply with the Court's orders in a timely fashion.

17 8. Extensions of time are not favored, though reasonable
18 extensions will be granted. Any motion for an extension of time
19 must be filed no later than fourteen days prior to the deadline
20 sought to be extended.

21 IT IS SO ORDERED.

22 Dated: 5/30/2013



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE